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Attorneys for Defendant,
Damien Sexton

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)	Case No. CR-07-0742 (EDL)
)	
UNITED STATES OF AMERICA,)	
)	DEFENDANT'S RESPONSE TO
Plaintiff,)	GOVERNMENT'S STATEMENT
vs.)	RE APPLICATION FOR A
)	SUBPOENA DUCES TECUM
DAMIEN SEXTON,)	
)	Date: March 25, 2008
Defendant.)	Time: 10:30 a.m.
)	Dept.: Judge Elizabeth D. Laporte

On March 19, 2008, defendant Sexton, by and through counsel, filed an *ex parte* application for the pretrial issuance of a subpoena *duces tecum*. The subpoena is directed at United Airlines and does not concern the government. The government has, in fact, taken the position that it does not "possess" information which is in the hands of United Airlines, stands in no relationship to

Defendant's Response to Government's Statement Re Application for a Subpoena Duces Tecum, CR-07-0742(EDL).

1 United Airlines, and claims that the airline would be no more likely to provide the information
2 sought to the government than it would be turn over such information to the defendant, pursuant to
3 a Rule 17(c) subpoena. United Airlines (the only other party to this motion) is, of course, perfectly
4 capable of raising any objections it may have with regard to the breadth of the subpoena on its own
5 initiative. The government, which has apparently refused even to attempt to obtain the information
6 in question from the airline, is not in a position to object to the defendant's subpoena. The
7 government's gratuitous suggestions about how the subpoena should be "modified," based on its
8 (the government's) opinion of which passengers might possess relevant information, should be
9 rejected. Having refused to assist in obtaining information relevant to the charge it brought, the
10 government should refrain from seeking to frustrate the defendant's efforts to obtain this
11 information.

12 Respectfully submitted,

13 Dated: March 21, 2008

14 /s/ William L. Osterhoudt
15 WILLIAM L. OSTERHOUDT
16 Attorney for Defendant
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Defendant's Response to Government's Statement Re Application for a Subpoena Duces Tecum, CR-07-0742(EDL).

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 135 Belvedere Street, San Francisco, California 94117.

On the date set forth below, I caused to be served the document entitled:

**DEFENDANT'S RESPONSE TO GOVERNMENT'S STATEMENT RE
APPLICATION FOR A PRETRIAL SUBPOENA DUCES TECUM**

on the party in this action as follows:

Allison Marston Danner
Assistant United States Attorney
450 Golden Gate Avenue
San Francisco, CA 94102
allison.danner@usdoj.gov

 X [BY ELECTRONIC SERVICE] Utilizing the ECF system of the United States District Court for the Northern District of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: March 21, 2008

/s/ Christopher W. Choy
Christopher W. Choy

Defendant's Response to Government's Statement Re Application for a Subpoena Duces Tecum, CR-07-0742(EDL).